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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street, S.W.
Washington, D.C. 20554

Re: GN Docket No. 00-1 85 and CS Docket No. 02-52
Inquiry Concerning High-speed Access to the Internet Over Cable and Other
Facilities and Appropriate Regulatory Treatment for Broadband Access to the
Internet Over Cable

Notice of Ex Parte Presentation

Dear Ms. Dortch:

My name is Jim Pickrell. I am the president of Brand X Internet LLC, and former president of CISPA, the California ISP Association.

In its March 15, 2002 Declaratory Ruling, the Commission asked for comments on, among other issues, whether it should forebear from regulating cable modem service. Brand X Internet LLC hereby submits this ex parte letter urging the Commission not to follow such a course.

Brand X has successfully challenged in the 9th Circuit Court the FCC proposal that cable modem service not be considered a telecommunications service, and therefore not subject to the competitive requirements of the Telecom Act. We believe the court's decision is supported by both the letter and the intent of the Telecom Act, which is to promote competition.

Small ISP's like ours are a product of competition. We believe that consumers are best served by a competitive environment, where they can choose the provider that serves them best. Consumers can choose based on cost, on service offering, or whatever criteria suits them, just as they choose their long distance carrier. It is much better to let the consumer make his own best decisions, than to have the FCC make it for them.

The large monopoly cable providers claim that without exemption from competition, they won't be able to roll out broadband services.

John Rockefeller made similar claims in favor of a monopoly on oil

drilling. Nobody would drill oil wells unless Rockefeller had a monopoly. The monopoly was broken but the oil still flows. History shows us that competition promotes, rather than discourages, innovation and investment. The reality is that monopolies tend to get fat and lazy, and it is their fear of competitors that is most likely to spur them into action. Competition is by far the best way for the FCC to harness the energy of industry for public benefit.

Frankly, nobody in our industry can understand why the FCC is so resolutely anti-competition. We have a personal stake in this argument because when the FCC takes action to suppress competition and centralize control over broadband services with a few national companies, we're the ones the FCC is trying to put out of business.

As a small local internet service provider, we depend on access to cable or phone lines for access to customers. If the FCC blocks us from access to cable lines or other forms of broadband lines, then we're out of business.

In December 2000, the Competitive Access Coalition, which included several members of CISPA, filed extensive comments in Docket No. GN 00-185 in which the Coalition explained why cable modem service was a communications service subject to common carriage obligations under the Communications Act. The Coalition also pointed out that, in order to forebear from regulation the Commission would need to make express findings that regulation was unnecessary to prevent discrimination or to protect against the exercise of market power. The Coalition also pointed out why, under the governing statutory standards, there was no remotely legitimate basis to forebear from regulating cable modem service. The Coalition's comments are as valid today as when the original Notice of Inquiry issued more than two and a half years ago and CISPA incorporates those comments here.

If anything, the concerns expressed by the Competitive Access Coalition are even more critical today. In the March 15 Declaratory Order issued concurrently with the NPRM, the Commission itself has found (1) that cable's market share of the broadband platform is nearly 70 percent and rising and (2) that that cable companies do not offer cable modem service voluntarily on a non-discriminatory basis. In other words, without regulation they will continue to discriminate.

Nothing has changed since March 2002. On the contrary, denied access to a broadband platform, nearly two thirds of the companies belonging to CISPA only two years ago are no longer in business. The Commission should not continue to place a blind eye to the harm its policy of de facto forebearance continues to wreak while it cogitates over whether to forebear legally. There is no lawful case for forebearance and and we urge the Commission to say so before still more competition for cable-run ISPs disappears.

Pursuant to sections 1.1206(b)(1) and (2) of the Commission.s rules, a copy of this letter and attachment is being filed electronically with the Office of the Secretary. Any questions concerning this submissionshould be addressed to the undersigned.

Respectfully submitted,

James Pickrell
President
Brand X Internet LLC